K 51.

Examiner's

File No. S. Belgaum 1/

Legal DEPARTMENT

E BRANCH

Subject:— Suits: Belgaum.

In the Court of the District-Judge, Belgaum

Misc. Applications Nos. 41 and 45 of 1950.

1. Ramchandra alias Raghunath Laxman
2. " Wali Mohamad. } Pltffs.

Vs.

The Commissioner, S. D. — Deft.

S. Belgaum 11/51

File No.

Bld. Scott...Qty 24-M

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X5/1

LEGAL DEPARTMENT.

Belgaum Mis.Appln.Nos.41 and 45 of 1950.

These are two applications filed under section 13 of the Bombay Local Fund Audit Act, 1930, against the Commissioner, Southern Division, and the Belgaum Municipal Borough for a declaration that the order of the Commissioner S.D. surcharging the applicants -- ex-members of the Standing Committee of the Belgaum Municipal Borough for the loss caused to the Municipality is illegal. These applications appear to be defensible. After enquiry the Commissioner, S.D. found that the lands which were proposed to be acquired by the Belgaum Municipality for a Bhangi passage were over valued and the Standing Committee sanctioned the payments even though it had no power so to do.

2. The defence of these applications may be sanctioned on the lines of the accompanying brief.

LOCAL SELF GOVERNMENT & PUBLIC HEALTH DEPT.
A -1 NOV 1950
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RK 30/10

Secy. L.S.G. & P.H. Dept.

BBB 31/X

Read at ... 30/10

Urgent
Please issue 2 copies

L.S.G.P.H.D.

THE STATE GOVERNMENT
LEGAL DEPARTMENT
File No
Sub No

L D. 14 NOV 1950

Seen & returned to the L.D. for necessary further action.

7/11/50

7-11-50

No. 15062
dt. 30-10-1950

MM/8/11

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U.S.

U.O. 8/13 to L.D.

Misc. Application No.41 of 1950.

In the Court of the District Judge, Belgaum.

1. Ramachandra alais Raghunath Laxman ... ... Applicant.

vs.

1. The Commissioner, S.D. Belgaum. ... ... Opponent.

Herein the objections of opponent No.1 are as under:-

1. The application is unfounded in law. Under section 63 of the Bombay Municipal Borough Act 1925, the power to acquire property vests in the Municipality and not in the Standing Committee of which the applicant was one of the members. That authority had not been duly delegated to the Standing Committee and therefore the Standing Committee had no power to enter into any transaction in respect of the acquisition nor ha it any power to make or authorize the payment of the price of the property. The action of the Standing Committee therefore, was illegal.

2. The second contention of the applicant namely that there was no loss occasioned to the Municipality is not correct and therefore is not tenable. The panch-valuation of the properties in question is far in excess of that made by the Technical staff of the Municipality. The panchas were never authorized to finally determine the value of the properties and it was therefore the duty of the Standing Committee to examine whether the valuation made by the panchas was proper and reasonable. This duty has not been properly discharged by the Standing Committee. The price fixed by the technical staff of the Municipality was arrived at strictly in accordance with the rates sanctioned by the Municipality in respect of the lands generally to be acquired. Hence the price fixed by the panchas being in excess of the sanctioned rates, could not be accepted. - the valuation made by the panchas and the payments made accordingly amount to a loss to the

Municipality in so far as they exceeded the valuation made by the technical staff. Hence the Commissioner was perfectly within his competence to pass the order in question.

3. The liability of the members of the Standing Committee stands as a whole and each member is jointly and severally liable for the acts of misfeasance, non-feasance and malfeasance.

4. The contention of the applicant that there has been a ratification by the General Body by its Res. No. 138 of 12-1-1944 and therefore all the defects and irregularities have been cured, is not correct, for the following reasons:-

i. The ratification is inspired by extraneous consideration with a view to save the members of the Standing Committee from their liability.

ii. There is no provision either in the Act or Rules for granting such ex-post- facto sanction and to save the members from the liability for committing any irregular or illegal act.

Consequently, subsequent approval of the general body, will not legalize the action of the Standing Committee, nor would it save the members of the said committee from their liability.

5. There has been no mistake of fact and law as alleged by the applicant in para 9 of the application. It was the primary duty of the Standing Committee to see that it had authority to sanction the bills of payments. The fact that payments should not have been made by the staff in consequence of unauthorized sanction, does not detract from the liability of the Standing Committee who sanction the payments, since the members of the staff are servants of the Standing Committee and as such bound to carry out the orders of the Standing Committee . The applicant therefore could not be allowed to shirk his responsibility.

For these reasons, it is prayed that the application of the applicant be dismissed with costs.

District Government Pleader,
Belgaum.

I, B.V.Jakati, District Government Pleader, Belgaum, on behalf of the opponent do hereby, solemnly affirm that what is stated above in the above mentioned paras 1 to 5 is true to the best of the information obtained and believed to be true.

District Government Pleader,
Belgaum.

Misc. Application No.45 of 1950.

In the Court of the District Judge, Belgaum.

1. Valli-mahommad Noor-mahammad ... .. Applicant.

vs.

1. The Commis ioner, S.D. Belgaum. .. Opponent.

Herein the objections of opponent No.1 are as under:-

1. The application is unfounded in law. Under section 63 of the Bombay Municipal Borough Act 1925, the power to acquire property vests in the Municipality and not in the Standing Committee of which the applicant was one of the members. That authority had not been duly delegated to the Standing Committee and therefore the Standing Committee had no power to enter into any transaction in respect of the acquisition nor had it any power to make or authorize the payment of the price of the property. The action of the Standing Committee therefore, was illegal.

2. The second contention of the applicant namely that there was no loss occasioned to the Municipality is not correct and therefore is not tenable. The panch valuation of the properties in question is far in excess of that made by the Technical staff of the Municipality, The panchas were never authorized to finally determine the value of the properties and it was therefore the duty of the Standing Committee to examine whether the valuation made by the panchas was proper and reasonable. This duty has not been properly discharged by the Standing Committee. The price fixed by the technical staff of the Municipality was arrived at strictly in accordance with the rates sanctioned by the Municipality in respect of the lands generally to be acquired. Hence the price fixed by the panchas being in excess of the sanctioned rates, could not be accepted.- the valuation made by the panchas and the payments made accordingly, amounted to a loss to the

Municipality in so far as they exceeded the valuation made by the technical staff. Hence the Commissioner was perfectly within his competence to pass the order in question.

3. The liability of the members of the Standing Committee stands as a whole and each member is jointly and severally liable for the acts of misfeasance, non-feasance and malfesance.

4. The contention of the applicant that there has been a ratification by the General Body by its Res.No. 138 of 12-1-1944 and therefore all the defects and irregularities have been cured, is not correct, for the following reasons:-

i. The ratification is inspired by extraneous consideration with a view to save the members of the Standing Committee from their liability.

ii. There is no provision either in the Act or Rules for granting such ex-post - facto sanction and to save the members from the liability for committing any irregular or illegal act.

Consequently, subsequent approval of the general body, will not legalize the action of the Standing Committee, nor would it save the members of the said committee from their liability.

5. There has been no mistake of fact and law as alleged by the applicant in para 9 of the application. It was the primary duty of the Standing Committee to see that it had authority to sanction the bills of payments. The fact that payments should not have been made by the staff in consequence of unauthorised sanction, does not detract from the liability of the Statnding Committee who sanctioned the payments since the members of the staff are servants of the Standing Committee and as such bound to carry out the orders of the Standing Committee. The applicant therefore could not be allowed to shirk his responsibilities.

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For these reasons, it is prayed that the application of the applicant be dismissed with costs.

District Government Pleader,
Belgaum.

I, B.V. Jakati, District Government Pleader, Belgaum, on behalf of the opponent do hereby, solemnly affirm that what is stated above in the above mentioned paras 1 to 5 is true to the best of the information obtained and believed to be true.

District Government Pleader,
Belgaum.

No. 1112

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 1950.
17th Jan.

Belgaum misc applications.
Subject:- ~~Civil Suit~~ No. 41 & 45 of 1950

MEMORANDUM.

With reference to his letter No. J. 2 dated the 3rd Jan. 1950 forwarding a draft ~~written~~ objections ~~statement~~ in the misc application ~~suit~~ noted above for approval, the District Government Pleader, is informed that two copies of the ~~revised~~ draft are forwarded herewith.
approved.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

BM.
20.3.

Issued up 17/1

Subject to forms
Orig.
17/1

Ag Solicitor:—
17-1.

Suits :

Belgaum.

Application for a declaration that the order of the Commissioner holding applicants liable for the loss to the municipality is illegal and ineffective.

4/5-47

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7812.

Bombay Castle, 17th May 1951.

Letter from the Director of Local Authorities, Southern Division, Belgaum, No. Adt. 1/15, dated the 18th September 1950—Forwarding the papers in the Miscellaneous Application, noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE DISTRICT JUDGE, BELGAUM.
MISCELLANEOUS APPLICATIONS NOS. 41 AND 45 OF 1950.

1. Ramchandra *alias* Raghunath Laxman
2. Wali Mohamad. } ... Plaintiffs;

versus

The Commissioner, Southern Division ... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 15993, dated the 16th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the miscellaneous applications on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

Original for

L Leg. H 58—1

[*P.T.O.*

To

*The Local Self-Government and Public Health Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Submitted after issues
File in S. Belgaum/57 (new)
27/7/57
A Sole

47/19

BELGAUM MISCELLANEOUS APPLICATIONS NOS. 41 AND 45 OF 1950.

Chronological Statement of Facts.

These are two applications filed by the Ex-members of the Standing Committee of the Belgaum Municipal Borough against the order of the Commissioner, Southern Division, surcharging two amounts viz., Rs. 470 and Rs. 422 against the two applicants who were the members of the Standing Committee.

2. The Belgaum Municipal Borough decided to acquire by private negotiations City Survey No. 4196 comprising an area of 242 sq. feet and City Survey Nos. 224 and 227 measuring 722 sq. ft. for the purpose of constructing and widening Bhangi lanes. The Overseer of the Municipality assessed the value of these two sites at Rs. 1,080 and Rs. 1,130 respectively on the basis of the rates sanctioned by the Municipality for similar lands in the locality. Since the owners did not agree to dispose of the lands at the aforesaid estimated price, the Municipality by its resolution No. 32 of 21st April 1938, appointed two *panchas* to determine the valuation of these properties and to report. The valuation was arbitrarily fixed at Rs. 1,550 for C.T.S. No. 4196 and Rs. 1,450 for C.T.S. Nos. 224 and 227. The standing Committee authorised the payment of the amounts in question to the owners and to get the sale-deeds executed without getting the sanction of the General Body as required by Rule 47 of the Municipal Rules.

3. The Local Fund Examiner objected to the excess payments of Rs. 470 and Rs. 422 and recommended the recovery thereof from the members of the Standing Committee by surcharging them. Since the members failed to pay the 'show cause' notice was issued and after hearing the parties the Commissioner, S. D., passed an order on 5th March 1935, surcharging the two amounts against these applicants who were considered to be jointly and severally liable for the loss caused to the Municipality. The applicants being aggrieved by that order have filed these applications under section 13 of the Bombay Local Fund Audit Act, 1930, in the Court of the District Judge, Belgaum.

Grounds of Defence.

The important contentions raised by the applicants are :—

(1) There was no breach of section 63 of the Bombay Municipal Boroughs Act, 1925, in sanctioning the *panch* valuations and payments by the Standing Committee ;

(2) Even if there be any such irregularity it was cured by subsequent ratification of these payments by the Municipality in 1944 ;

(3) The Commissioner, Southern Division, was wrong in fixing the joint and several liability on the applicants ;

(4) On merits the Commissioner, S. D., had no ground to surcharge the applicants.

2. Power to acquire property under section 63 of the Bombay Municipal Boroughs Act, 1925, vests in the Municipality. This power includes power to pay the value or the price for such acquisition. Rule 47 of the Municipal Rules and Schedule B thereto specifically reserve this power of acquiring the property to the Municipality. Consequently, the power to acquire properties and to pay the price for

them vests in the Municipality and has not been delegated to any other authority. This being so, the Standing Committee of the Belgaum Municipality had no power to enter into any transactions in respect of the acquisition or purchase of the lands nor did it have any power to authorise payment of any price for such lands. Evidently, therefore, the action of the Standing Committee was illegal. It is contended that even though the Standing Committee had no power, the irregularity, if any, was cured by the ratification of these payments by the Municipality in 1944. Apparently, this ratification must have been inspired by extraneous considerations with a view to save the members of the Standing Committee from any liability for their unauthorised action, since, otherwise there was no reason why there should have been such long delay in such ratification. Even that apart, there is no provision either in the Act or the Rules for granting any such *ex-post-facto* sanction and to save the Members from the liability for committing any irregular or illegal act. Consequently, subsequent approval of the General Body will not legalize the action of the Standing Committee nor would it save them from the liability.

3. It is apparent from the scheme of the Bombay Local Fund Audit Act, 1930, that the power under the Act is intended to save wastage of funds of the local authorities. The members of the local authority are always treated as Trustees and they are responsible to see that the funds of the local authority are properly utilized. To carry out that object provisions are made in sections 11 and 12 for surcharging the members for the loss caused by gross negligence or misconduct on their part or for illegal payments made by them. If any loss is caused to the local authority, which is unauthorised or illegal, it is in the nature of misfeasance for which all the members who authorised such expenditure would certainly be liable. *Prima facie,* therefore, their liability is joint as well as several. Consequently, the Order of the Commissioner, S. D., holding the applicants jointly and severally liable for the loss caused to the Municipality is lawful.

4. On merits these applications are clearly defensible. The Commissioner, S. D., has rightly remarked in his order that 'the opinion of an amateur like a *panch* cannot outweight the expert opinion of the technical staff in point of accuracy in the absence of valid reasons in favour of the former.' There is evidence that the prices fixed by the technical staff were arrived at strictly in accordance with the rates sanctioned by the Municipality in respect of the lands generally to be acquired. The City Survey Officer in his report, dated the 28th August 1940, to the Collector of Belgaum, has clearly stated that the prices paid were in excess of the recorded sales of similar lands in the vicinity. The *panchas* who were appointed by the Municipality were asked merely to report about the proper value of these lands. They were, in fact never authorised to determine finally the value of these lands. It was, therefore, the duty of the Standing Committee to examine whether the valuation made by the *Panchas* was proper and reasonable particularly when there was much disparity between that valuation and the valuation made by the experts of the Municipality. The Standing Committee must have been aware of the limitations of their own powers. It is not disputed that the Standing Committee had no power to sanction the sales and authorize payments. The very fact that a resolution of the Municipality was later on passed ratifying the action

taken by the Standing Committee would itself evidently show that the Standing Committee had no such power and their action was clearly illegal. It is, therefore, clear that the Standing Committee not only acted illegally but were also negligent enough in accepting the valuation of the *Panchas* and sanctioning the payments. The applicants appear to shift the responsibility on to the Municipal servants. They appear to contend that even though they had sanctioned the payment it was up to the Municipal Officers to withhold payments when they should have seen that the Rules did not provide for the delegation of the power to the Standing Committee. It may be mentioned that the officers of the Municipality are to carry out the orders of the Standing Committee. It was the primary responsibility of the Standing Committee itself to see that its action was within the bounds of law. Consequently, it would not be open to the applicants to take shelter under a plea that the Municipal Servants should not have made payments when by its resolution the Standing Committee had authorised the payments.

In these circumstances, the applicants' contentions fail and the applications must be dismissed with costs.